

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Proposing rule making related to consumer and commercial fireworks and providing an opportunity for public comment

The State Fire Marshal hereby proposes to amend Chapter 265, “Consumer Fireworks Sales Licensing and Safety Standards,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 100.19.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 100.19.

Purpose and Summary

Since the inception of Iowa’s consumer firework license, the State Fire Marshal has attempted to strike a balance between the needs of public safety and the industry. As such, the current rules in regard to inspections have never been strictly followed because of strict time constraints to complete inspections during the short fireworks season. The proposed amendments account for what has been learned about this industry and best practices for striking an appropriate balance. Also included in this proposed rule making are some updates to the website information and similar references.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 10, 2020. Comments should be directed to:

Dan Wood
Department of Public Safety
Oran Pape State Office Building
215 East 7th Street
Des Moines, Iowa 50319
Phone: 515.725.6150

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definitions of “Commercial fireworks,” “Consumer fireworks,” and “Serious violation” in rule **661—265.20(100)**:

“*Commercial fireworks*” means large firework devices that are explosive materials intended for use in firework displays and designed to produce visible or audible effects by combustion, deflagration, or detonation, as set forth in 27 CFR 555, 49 CFR 172, and APA Standard 87-1, Standard for the Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics.

“*Consumer fireworks*” means small firework devices containing restricted amounts of pyrotechnic composition, designed primarily to produce visible or audible effects by combustion, that comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission (CPSC), as set forth in CPSC 16 CFR 1500 and 1507, 49 CFR 172, and APA Standard 87-1, Standard for the Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics.

“*Serious violation*” means any of the following activities occurring at a licensed retail location selling consumer fireworks:

1. Commission of a criminal offense, punishable by one year or more incarceration.
2. Selling consumer fireworks to a minor.
3. Selling commercial fireworks.

ITEM 2. Amend rule 661—265.23(100) as follows:

661—265.23(100) Consumer fireworks retail sales license.

265.23(1) No change.

265.23(2) *Application form and instructions.* The application for a license for retail sales of first-class consumer fireworks or second-class consumer fireworks, or both first-class consumer fireworks and second-class consumer fireworks, shall be made to the state fire marshal. The application form and instructions may be found on the state fire marshal website at www.dps.state.ia.us/fm/building/licensing/consumerfireworksindex.shtml dps.iowa.gov/divisions/state-fire-marshal/consumer-fireworks-licensing.

265.23(3) No change.

ITEM 3. Amend rule 661—265.26(100) as follows:

661—265.26(100) Plan review and inspection—guidelines.

265.26(1) *Inspections.*

a. Any retailer or community group offering for sale at retail any consumer fireworks, as described in APA 87-1, shall do so in accordance with NFPA 1124. Every location and any building or structure where the retail sales of consumer fireworks are conducted or where consumer fireworks are stored is subject to an inspection at any time while engaged in the retail sale of consumer fireworks.

~~In the discretion of the state fire marshal, prelicense inspections may not be required in the following circumstances:~~

~~(1) For permanent buildings or temporary structures in which only exempt amounts of first-class or second-class consumer fireworks are offered for sale, pursuant to section 7.3.1, NFPA 1124. The licensee shall make current product inventory information available to the state fire marshal upon request.~~

~~(2) For permanent buildings that were licensed in the previous year and for which there have been no changes to the site, building or floor plan. If any changes have been made, then a new or updated plan shall be submitted.~~

~~b. State licensing inspections shall only be conducted by persons approved by the state fire marshal. The inspection form shall be approved by the state fire marshal and will be available only to approved inspectors.~~

~~c. Each location, including the building(s) or structure(s) where the retail sales of consumer fireworks will be conducted or are conducted or where consumer fireworks are stored, must pass the state licensing inspection when conducted. Each location, including the building(s) or structure(s) must pass all elements of the inspection as conducted.~~

~~b. Prior to the sale of consumer fireworks, each retail location shall satisfy one of the following requirements:~~

~~(1) A site inspection of the retail location by the state fire marshal or the state fire marshal's designee.~~

~~(2) Attestation at the time of the application by the person submitting the application that the retail location will comply with NFPA 1124 and these rules, including rule 661—265.25(100).~~

~~c. If a retail location license is revoked, the location shall satisfy the requirements of subparagraph 265.26(1) "b"(1) prior to engaging in the sale of consumer fireworks the following year. The retail location shall not satisfy subparagraph 265.26(1) "b"(2) to sale consumer fireworks.~~

265.26(2) Reserved.

ITEM 4. Amend rule 661—265.27(100) as follows:

661—265.27(100) Issuance and display of license. The submitted application, any additional documents and information, and the completed inspection form shall be reviewed by the state fire marshal's office.

265.27(1) If all of the requirements are met and the correct license fee is paid, the state fire marshal shall issue the license. The license will be sent by email or can be downloaded from the state fire marshal's licensing website at www.dps.state.ia.us/fm/building/licensing/consumerfireworksindex.shtml. The license shall be effective for the applicable date(s) for the sales of consumer fireworks.

265.27(2) The license must be clearly displayed at the location where the retail sales of consumer fireworks for which the license was issued are conducted.

ITEM 5. Amend rule 661—265.31(100) as follows:

661—265.31(100) Annual registration. Each wholesaler shall register with the state fire marshal annually.

265.31(1) Registration process. Each wholesaler shall complete the annual registration form and submit the form to the state fire marshal's office. The registration form and instructions may be found on the state fire marshal's licensing website at www.dps.state.ia.us/fm/building/licensing/consumerfireworksindex.shtml.

265.31(2) Registration fee. Each wholesaler shall pay an annual registration fee of \$1,000 to the state fire marshal.

ITEM 6. Rescind rule 661—265.40(100) and adopt the following **new** rule in lieu thereof:

661—265.40(100) Revocation of license. If the state fire marshal or state fire marshal's designee determines during a physical site inspection that a serious violation has occurred, the license for that

retail location shall be immediately revoked. Violations that are not serious violations shall be given the opportunity to remedy the violation.

ITEM 7. Rescind and reserve rules **661—265.41(100)** to **661—265.43(100)**.

ITEM 8. Amend subrule 265.51(4) as follows:

265.51(4) Application. The application for grant funds shall be made to the state fire marshal. The application form may be found at ~~www.dps.state.ia.us/fm/building/licensing/consumerfireworksindex.shtml~~ dps.iowa.gov/divisions/state-fire-marshal/consumer-fireworks-licensing. Applications must be received on or before June 30 of each year. The application shall include all of the following:

a. to *c.* No change.